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5 PHH MORTGAGE CORPORATION ON

BEHALF OF BANCO POPULAR NORTH

6 AMERICA

7
8 **UNITED STATES BANKRUPTCY COURT**

9 **SOUTHERN CENTRAL DISTRICT OF CALIFORNIA- SAN DIEGO DIVISION**

10 In re

11
12 Dana Aaron Linett,

13 Debtor.

Case No. 19-05831-LA11

Chapter 11

**OBJECTION TO CONFIRMATION OF
DEBTOR'S JOINT LIQUIDATING
CHAPTER 11 PLAN OF
REORGANIZATION**

Confirmation Hearing:

DATE: November 4, 2021

TIME: 2:30 p.m.

CTRM: 118

DEPT: 2

Subject Property:

14810 Rancho Santa Fe Farm

Rancho Santa Fe, CA 92067

20 Banco Popular North America, by and through its authorized loan servicing agent, PHH
21 Mortgage (collectively the "Creditor") hereby submits this Objection to Confirmation of the
22 Debtor's Fourth Amended Chapter 11 Plan of Reorganization (the "Objection").

23 **I. STATEMENT OF FACTS¹**

24 1. Creditor is the beneficiary of a Deed of Trust encumbering the real property
25 located at 14810 Rancho Santa Fe Farm, Rancho Santa Fe, CA 92067 (the "Subject Property").

26
27 ¹ Pursuant to Rules 201(b) and 201(d) of the Federal Rules of Evidence, which are made applicable to this
28 proceeding by Rule 9017 of Federal Rules of Bankruptcy Procedure, Creditor requests that the Court take judicial
notice of the sworn bankruptcy schedules and other relevant documents filed in the instant case. References to the
dockets are in the following format: Docket Entry No. [Number].

2. Creditor filed a Proof of Claim in the instant case on December 4, 2019. *See* Claims Register, Claim No. 6-1. The Proof of Claim provides for a secured claim in the amount of \$1,329,291.56. *Id.*

3. The Debtor filed its Joint Liquidating Initial Chapter 11 Plan (the “Plan”) on September 16, 2021. *See* Docket Entry No. 273 & 274.

4. Creditor’s claim is provided for in the Plan under “Class 1a”. The Plan proposes to sell the Subject Property at which point Creditor shall be paid in full from the net proceeds of the sale after costs of sale are paid.

5. The Plan does not provide for a date in which a sale needs to occur.

6. Creditor now submits its Limited Objection to the Debtor’s Plan.

II. ARGUMENT

A. Creditor does not Consent to the Proposed Plan Treatment.

As discussed above, the Plan seeks to sell the Subject Property and pay Creditor off. Normally, Creditor wouldn’t have an opposition to the proposed treatment. However, this plan is deficient in the fact that it fails to specify a drop-dead date in which the Subject Property is to be sold. As the loan is non-escrowed, Debtor is supposed to be making payments on the property taxes. There is a tax default with regard to the Subject Property. If the Subject Property is not sold expeditiously, the property becomes less protected due to an increasing property tax bill. Creditor would request a drop-dead date for which a sale is to occur. If the Subject Property is not sold by that specified date, then Creditor shall have the ability to proceed with its state law remedies without the fear of violating of a plan injunction.

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1 **WHEREFORE**, Creditor respectfully requests:

- 2 1. That confirmation of the Plan be denied;
- 3 2. For such other and further relief as this court deems just and proper
- 4

5 Respectfully submitted,

6 **ROBERTSON, ANSCHUTZ, SCHNEID & CRANE LLP**

7 Dated: October 18, 2021

8 /s/ Sean C. Ferry

9 Sean C. Ferry

10 Attorney for Creditor PHH MORTGAGE
11 CORPORATION ON BEHALF OF BANCO
12 POPULAR NORTH AMERICA

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CERTIFICATE OF SERVICE

16 I, Sean C. Ferry, hereby declare as follows:

17 I am an active member of the State Bar of California and I am not a party to the above-
18 captioned case; my business address is 350 10th Avenue, Suite 1000, San Diego, CA 92101.

19 On October 18, 2021, I caused copies of the following document(s) to be served:

20 **1. Objection to Confirmation of Chapter 11 Plan**

21 in the following manner on the parties listed below:

- 22
- 23 • **BY FIRST CLASS MAIL:** Pursuant to Federal Rule of Bankruptcy Procedure 7004(b), I
24 enclosed said document(s) in a sealed envelope addressed to the persons at the
25 address(es) listed below, placed first class postage fully prepaid thereon, and deposited
26 said envelope in a United States mailbox.
27
28

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• **BY ELECTROIC SERVICE (ECF):**

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I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on this 26th day of April, 2021.

/s/ Sean C. Ferry
Sean C. Ferry